

NFL PARTNERSHIP  
MAIN STREET FEDERAL ENERGY CO.

IBLA 83-882, IBLA 83-883

Decided July 17, 1984

Consolidated appeals from decisions of the Wyoming State Office, Bureau of Land Management, rejecting first-drawn applications for oil and gas leases W-85906 and W-85949, and barring participation in future selections until payment of an amount equal to an uncollectible remittance for oil and gas lease application filing fees plus a service charge.

Affirmed.

1. Accounts: Fees and Commissions -- Oil and Gas Leases:  
Applications: Generally

Under 43 CFR 3112.2-2(c) (1982), BLM properly disqualifies simultaneous oil and gas lease applications submitted with uncollectible filing fees and requires payment of the debt as a condition of further participation in the simultaneous leasing program.

APPEARANCES: James W. McDade, Esq., and Jason R. Warran, Esq., Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Main Street Federal Energy Company (Main Street) has appealed from the July 7, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), disqualifying simultaneous oil and gas lease applications filed in the May 1983 drawing because the filing fees for these applications were covered by a check for \$10,725, which was returned as uncollectible. The decision also stated that until the outstanding debt represented by the check plus a \$10 service charge is paid, "no applications or checks issuing from, associated with, or represented by Main Street Federal Energy, in its own or in others behalf, shall be accepted."

NFL Partnership (NFL) has appealed from the July 18, 1983, decision of the Wyoming State Office rejecting its simultaneous oil and gas lease applications, W-85906 and W-85949, drawn with first priority for parcels WY-596 and WY-639 in the May 1983 simultaneous oil and gas lease drawing. NFL's applications were rejected because the checks submitted by Main Street filing service for the payment of the filing fees had been returned as uncollectible. Because both appeals arose from the same factual circumstances

and present similar legal issues, we consolidated them by order dated September 27, 1983. <sup>1/</sup>

The Wyoming State Office had originally disqualified the applications of all of Main Street's clients, including those whose applications were not covered by the check returned as uncollectible. These decisions were rescinded when the checks involving the other clients' applications cleared. By letter dated July 28, 1983, the Wyoming State Office indicated that only the applications submitted by NFL for Wyoming were disqualified.

[1] Counsel for appellants explains: "Main Street had written the check in the good-faith expectation that the deposit needed to cover it would be immediately forthcoming from the clients; but that did not transpire" (Statement of Reasons at 2). In Marceann Killian, 79 IBLA 105 (1984), the Board considered a similar appeal by an applicant who had written a check for an application on an account that did not have sufficient funds to cover the check. Noting that it was the applicant's responsibility to ensure that the checks were paid, the Board held that BLM properly rejected the applications and barred the applicant from further participation in the drawing until the remittance was paid. This holding was based on Departmental regulation 43 CFR 3112.2-2, which provides in pertinent part as follows:

(a) Each filing shall be accompanied by a \$75 filing fee.

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(c) An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. In such a case, the amount of the remittance shall be a debt due to the United States which shall be paid before the applicant is permitted to participate in any future selection.

Appellants are cognizant of the regulation but argue that "changes have occurred in the nature of the simultaneous oil and gas leasing system that are so fundamental as to bar that provision from being invoked" (Statement of Reasons at 4). First, appellants note, one previously was required to file a separate application form for each parcel desired; now, an applicant is encouraged to include applications for all parcels in a particular state on a single form. The second change is the increase in the filing from \$10 to \$75 per application. Appellants noted that under present regulatory procedures, applications that are not timely filed, or incomplete, or are improperly prepared, or are received in a condition that prevents automated processing, or are received with an insufficient fee, will now result in a retention of \$75 as the cost of processing, and the return of any remainder. See generally Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984). Appellants contend that the distinction between those cases and the instant appeal is difficult to justify (Statement of Reasons at 8). This distinction, however, was explained in the concurring opinion in Marceann Killian, *supra* at 110-11:

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<sup>1/</sup> The appeal of NFL was assigned docket number IBLA 83-882; the appeal of Main Street was assigned docket number IBLA 83-883.

The key distinction resides in the fact that where there is an insufficient remittance, the application is returned without processing, while where there is an uncollectible remittance, the application is processed and then rejected. This distinction becomes critical when one examines the effect of section 1401(d) of the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 748. That provision states:

Notwithstanding any other provision of law, effective October 1, 1981, all applications for noncompetitive oil and gas leases shall be accompanied by a filing fee of not less than \$25 for each application: Provided, That any increase in the filing fee above \$25 shall be established by regulation and subject to the provisions of the Act of August 31, 1951 (65 Stat. 290), the Act of October 20, 1976 (90 Stat. 2765) but not limited to actual costs. Such fees shall be retained as a service charge even though the application or offer may be rejected or withdrawn in whole or in part. [Emphasis supplied.]

The filing fee was, of course, duly raised to \$75 per application. See 47 FR 2864 (Jan. 20, 1982). However, the statutory requirement that the filing fees be retained for either rejected or withdrawn applications has not been altered in any way. Therefore, where applications are rejected, the filing fees must be retained, and those filing fees which are retained need have no relation to the actual processing costs which the Government has incurred. Where an application has been properly processed through the simultaneous system, any subsequent action in derogation of the application represents a rejection of the application. The applications herein were correctly processed. Thus, rejection of an application rather than a return of the application form is involved, and appellant may not avail herself of the more liberal treatment accorded applicants whose errors prevent processing.

In the face of this clear congressional directive, the Department has no authority to authorize refunds for rejected filings, regardless of the severity of the result. [Emphasis in original.]

The majority in Killian also pointed out the necessity for strictly enforcing this rule by barring applicants from future drawings if they failed to pay the amount of the uncollectible remittance: "Although the results may appear harsh, if applicants were not required to submit a collectible remittance at the outset, BLM could be continually faced with checks that are only paid if the applicant received priority on a desirable parcel." Marceann Killian, supra at 107-08. The majority noted that the widespread problem of uncollectible payments has been a matter of significant concern to BLM. Id. at 108 n.5. In view of the gravity of the problem, the regulatory provision is not disproportionate.

Appellants contend that if the Board concludes that the fee cannot be refunded, the Board should direct, in the alternative, that the applications of NFL for the leases be adjudicated with first priority. This alternative is also precluded by statute. Under 30 U.S.C. § 226(c) (1982), a noncompetitive oil and gas lease may only be awarded to the first qualified applicant. Where an applicant is disqualified because he failed to accompany his application with a collectible remittance, he cannot be given priority over other applicants. See generally Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Although the result may seem harsh, it is not unjust. Appellants, like other members of the public, are chargeable with constructive knowledge of the regulation at issue. See 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). The regulation controlling disposition of this appeal is clear and unambiguous, and it is unlikely that a filing service acting for clients by virtue of its expertise in these matters would be unaware of the regulation's effect. <sup>2/</sup> One who writes a check on an account that does not have sufficient funds to cover it assumes the risk of such clearly defined consequences if the check is presented before the funds become available. See Marceann Killian, supra at 108. Appellants must bear the responsibility for their actions or the actions of their agents.

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<sup>2/</sup> On May 25, 1984, appellants filed a motion to suspend consideration of these appeals pending final publication of rules proposed in the Federal Register on March 15, 1984 (49 FR 9752). The final regulations were published June 29, 1984, and become effective on July 30, 1984 (49 FR 26918). Appellants point out that under 43 CFR 3112.2-2, as amended, 49 FR at 26920, applications submitted without sufficient funds would be considered unacceptable, and that under Shaw Resources Inc., supra, appellants should be refunded all but \$75 of the filing fees for each Part B. In publishing the regulations, however, the Department announced that an application would not be processed until the remittance had cleared. The preamble states:

"There will be a sufficient time between the time an application is received and the selection of the successful applicant is made to determine if the remittance is acceptable. If the remittance is uncollectable, the application that is covered by the remittance will be considered unacceptable and removed prior to the selection process."

49 FR 26918. By contrast, the procedures governing the drawing under which this appeal arises required BLM to process the applications for selections prior to the clearance of any remittance. Thus, the amended regulation cannot be applied to the instant case because BLM did not have the opportunity to await clearance of appellants' remittance prior to the drawing. BLM properly treated appellants' applications as acceptable for processing under the regulations in effect at the time of the drawing. When appellants' remittance failed to clear, BLM had no choice but to take the action it did, as was explained in Marceann Killian, supra. The amendment of the regulations provides no basis for treating appellants differently from others in similar circumstances. See Charles R. Brucks, Jr., 80 IBLA 190 (1984); Marceann Killian, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Wyoming State Office are affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

